

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RUDY ALBERTO JOCOL-ALFARO,
a/k/a Jesus Santiago,

Defendant.

No. 11-CR-4133-DEO

ORDER ACCEPTING REPORT
AND RECOMMENDATION
CONCERNING GUILTY PLEA

I. INTRODUCTION AND BACKGROUND

Before the Court is Chief Magistrate Judge Paul A. Zoss's Report and Recommendation Concerning Guilty Plea (Docket No. 42, 02/09/2012).

On September 29, 2011, a four count Indictment (Docket No. 2) was returned in the above-referenced case. On February 9, 2012, Defendant Rudy Alberto Jocol-Alfaro, a/k/a Jesus Santiago, entered guilty pleas to Counts 2 and 4 before Chief United States Magistrate Judge Paul A. Zoss.

Count 2 of the Indictment charges that on or about July 25, 2008, in the Northern District of Iowa, defendant Rudy Alberto Jocol-Alfaro did knowingly, and with the intent to engage unlawfully in employment in the United States, make a false statement and claim to be a citizen or national of the

United States. In the course of applying for employment, defendant checked a box on an immigration form I-9 to claim he was a "citizen or national of the United States," when in truth and in fact defendant knew he was a citizen of Guatemala and not a citizen or national of the United States.

This was in violation of Title 18, United States Code, Section 1015(e).

Count 4 of the Indictment charges that on or about August 30, 2011, in the Northern District of Iowa, defendant, Rudy Alberto Jocol-Alfaro, an alien citizen of Guatemala, was found knowingly and unlawfully in the United States after having been previously removed from the United States to Guatemala on or about June 30, 2005. Defendant did not obtain the express consent of the Attorney General of the United States or his successor, the Secretary for Homeland Security (Title 6, United States Code, Section 202(3) and (4) and Section 557), to reapply for admission into the United States prior to re-entering the United States after June 30, 2005, on an unknown date at an unknown location.

This was in violation of Title 8, United States Code, Section 1326(a).

The Report and Recommendation (Docket No. 42), states that there is no plea agreement and recommends that defendant Rudy Alberto Jocol-Alfaro's, a/k/a Jesus Santiago's, guilty pleas relating to counts 2 and 4 be accepted.¹ Waivers of objections to Judge Zoss's Report and Recommendation were filed by each party (Docket Nos. 43 and 44). The Court, therefore, undertakes the necessary review to accept defendant Rudy Alberto Jocol-Alfaro's plea in this case.

II. ANALYSIS

A. Standard of Review

Pursuant to statute, this Court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's

¹Counts 1 and 3 will be dismissed by the Government at the time of sentencing.

Report and Recommendation on dispositive motions and prisoner petitions, where objections are made as follows:

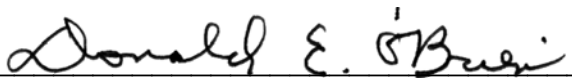
The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommendation decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

As mentioned, waivers of objections to the Report and Recommendation have been filed, and it appears to the Court upon review of Chief Magistrate Judge Zoss's findings and conclusions that there are no grounds to reject or modify them.

IT IS THEREFORE HEREBY ORDERED that this Court accepts Chief Magistrate Judge Zoss's Report and Recommendation (Docket No. 42), and accepts defendant Rudy Alberto Jocol-Alfaro's pleas of guilt in this case to Counts 2 and 4 of the Indictment (Docket No. 2).

IT IS SO ORDERED this 16th day of February, 2012.


Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa